

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDY J. LITTLE and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, Okla.

*Docket No. 96-1105; Submitted on the Record;
Issued January 26, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on January 23, 1995.

On January 23, 1995 appellant, then a 31-year-old mail carrier filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that she was opening the door to a business in order to deliver her mail, when she was bitten by a dog on her left leg in the performance of duty. The record shows that appellant lost no time from work due to the reported incident.

In a February 13, 1995 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury, and noted how crucial this evidence was to her claim. Appellant was allotted 30 days within which to submit the requested evidence.

By decision dated March 7, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury. In an accompanying memorandum, the Office noted that appellant was advised of the deficiency in her claim on February 13, 1995, and afforded 30 days to provide supportive evidence; however, no medical evidence of any kind was submitted to support the fact that appellant sustained an injury on January 23, 1995, as alleged.

The Board finds that this case is not in posture for decision and must be remanded for further development.

Section 20 C.F.R. § 10.110(b) of the Code of Federal Regulations of the Office provides:

“If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof.”

As of this point, the burden of proof is still on the claimant, but the Office has a duty to assist in some measure in the development of the claim. Furthermore, it is well established that proceedings under the Federal Employees’ Compensation Act¹ are not adversarial in nature nor is the Office a disinterested arbiter.² While appellant has the burden to establish entitlement to compensation when adjudicating a claim,³ the Office shares responsibility in the development of the evidence. The Office has an obligation to see that justice is done.⁴ Office regulations provide that if a claimant initially submits supportive evidence that is not sufficient to meet the burden of proof, the Office will inform the claimant of the defects in the claim and grant at least thirty (30) days for the claimant to submit responsive evidence.⁵

In the instant case, the Office failed to allow appellant the specified 30 days within which to submit responsive evidence. As noted above, the Office advised appellant of the deficiencies in her claim on February 13, 1995, and indicated that appellant would be allowed 30 days within which to submit the supported factual and/or medical evidence. However, on March 7, 1995, only 22 days later, and less than the 30 calendar days specified by section 10.110(b) of the regulations which required the Office to grant appellant at least thirty 30 days in which to submit responsive evidence, the Office issued its decision denying appellant’s claim for benefits.

The Board will therefore set aside the Office’s March 7, 1995 decision and remand the case for further appropriate development. On remand, the Office shall again advise appellant of the defects of her claim and properly grant and allow her at least 30 days in which to submit responsive evidence.⁶ Following this and after such further development as it deems necessary, the Office shall issue a *de novo* decision.⁷

¹ 5 U.S.C. §§ 8101-8193.

² See *Elaine K. Kreyborg*, 41 ECAB 256 (1989); *William J. Cantrell*, 34 ECAB 1233 (1983).

³ See *Elaine Pendleton*, 41 ECAB 1143 (1989); see also 20 C.F.R. § 10.110.

⁴ See *John J. Carlone*, 41 ECAB 354 (1989).

⁵ 20 C.F.R. § 10.110(b).

⁶ *Id.*

⁷ Following the Office’s March 7, 1995 decision appellant submitted additional evidence. The Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated March 7, 1995 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
January 26, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member